

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 45 of 1999

to

CRIMINAL REVISION APPLICATION No 97 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 2 - yes; 3 to 5 - no

BHARUCH TEXTILE MILLS LIMITED

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

MR PG DESAI, PP in 45/99 TO 69/99 for respondent No.1

MR KP RAVAL, APP in 70/99 to 83/99 for respondent

No.1

MR SA PANDYA, APP in 84/99 to 97/99 for respondent

No.1

MR ANAND BHATT for respondent Nos.2 and 3.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/03/99

COMMON ORAL JUDGEMENT

Aforesaid petitions have been filed by the petitioner against the common order passed below exh.23 in Criminal Case No.23104 of 1994 with allied matters filed by the present petitioner-original complainant directly in the Court of learned Chief Judicial Magistrate at Bharuch. After verifying the same, Court has issued the order under sec.156(3) of Cr.P.C. and directed the Police to investigate the matter. In turn, Police has investigated the matter and at the end of investigation, Police has submitted the charge-sheet. In the meanwhile, present respondent-original accused has filed the proceedings in the High Court under sec.482 and above proceedings took its own time and after its disposal, the Court below has taken cognizance by framing the charge. During that period, prosecution thought it fit and necessary to further investigate the matter and they have submitted application seeking formal permission under sec.173(8) of Cr.P.C. before the learned Chief Judicial Magistrate. When it has come up for hearing, learned Magistrate, after considering the facts and arguments of the respective parties including the learned counsel for the accused, has passed the order rejecting the applications. Against that, present Criminal Revision Applications have been preferred in which, notices were issued.

2. Today, learned counsel, Mr.Anand Bhatt, has made a statement before the Bar that he has got instruction to appear on behalf of the original accused and, therefore, previous order dated 17-3-1999 passed by this Court deleting the names of respondents Nos.2 and 3 may be recalled for which, learned counsel for the petitioners has no objection. Therefore, I recall the previous order.

3. I have heard learned counsel for the respondents Nos.2 and 3-original accused without taking into consideration whether they have any locus standi to argue the matter or not.

4. Learned counsel for the respondents Nos.2 and 3 relying upon a case reported in 1997 (1) SCC page 361 has argued that in view of the above reported judgment of the Apex Court, the Court below has rightly rejected the applications and, therefore, this Court should not interfere with the said order.

5. I have also heard the learned counsel for the petitioners and learned APP for the State. I have gone through the application exh.50 submitted by the learned

APP before the Court below on 12-1-1998 with detailed reasoning that why prosecution wants further investigation in the matter. Learned counsel for the petitioner and learned APP have mainly argued that here in this case, there are lacunae in the investigation. Looking to the nature of the offence, Police has not investigated the matter in a proper manner and Court below has rejected the same on the ground that the prosecution can examine the above witnesses under the provisions mentioned in Cr.P.C. during the course of proceedings, more particularly sec.311 of Cr.P.C. But facts remain that the Investigating Officer has investigated the matter in such a manner that he has not entered in the area which is required to be investigated by him in the interest of justice and without that, this investigation is nothing but a show made that investigation is done and charge-sheet is filed in the Court.

6. In view of the above reported judgment, learned Judicial Magistrate, after taking cognizance of the offence on the basis of Police report, passed an order on his own and ordered for further investigation. It is true that learned Magistrate cannot order for further investigation on his own. But here in this case, for further investigation, applications have been submitted by the investigating agency through prosecution and obviously so, but it was a formal sanction asked by the agency which ought to have been granted by the Court below, but the learned Chief Judicial Magistrate has misread the applications and in turn, relied upon the above judgment and passed the said order. Learned Chief Judicial Magistrate has no reason to reject those applications because it is the privilege of the investigating agency to further investigate in the matter at any stage for which no permission is required to be obtained from the Court. Therefore in my opinion, learned Chief Judicial Magistrate has misread the judgment and facts in such a manner which ultimately resulted into the present order and for that, this matter has to stretch upto the High Court.

7. It is true that it is an old case. However, facts remain that parties have played substantial role and, therefore, now for their own wrong, Court cannot shut the door of justice at this stage. Hence, I am of the view that if further investigation is ordered, no harm or prejudice will be caused to the original accused. Hence, I pass the following order.

All the above Criminal Revision Applications are

allowed. Order passed by the Court below on the application dated 12-1-1998 submitted by the prosecution is hereby quashed and set aside. Investigating Officer is directed to further investigate the matter keeping in mind the application submitted by the learned APP to the Court and to report within a period of 45 days from the date of receipt of this order. If further time is required, then he is at liberty to ask for the same before the Chief Judicial Magistrate before whom the present proceedings are pending. During the period of further investigation, original accused are at liberty not to appear before the Court personally, but on completion of investigation and on submitting the report by the Investigating Officer, original accused are directed to appear before the Court below within a period of fifteen days from the date of submitting the report. Rule is made absolute in all the above Criminal Revision Applications.

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